

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

NATIONAL RIFLE ASSOCIATION OF AMERICA,

Plaintiff and Counter-Defendant,

and

WAYNE LAPIERRE,

Third-Party Defendant,

v.

ACKERMAN MCQUEEN, INC.,

Defendant and Counter-Plaintiff,

and

MERCURY GROUP, INC., HENRY MARTIN, WILLIAM WINKLER, MELANIE MONTGOMERY, AND JESSE GREENBERG,

Defendants.

Civil Action No. 3:19-cv-02074-G

**PLAINTIFF'S UNOPPOSED MOTION ON DEFENDANTS' PENDING
MOTION TO DISMISS**

Plaintiff the National Rifle Association of America (the “NRA”) files this unopposed motion in connection with Defendants’ pending motion to dismiss for failure to state a claim. *See* ECF Nos. 9-10. The NRA seeks an order that Defendants’ pending motion to dismiss should be withdrawn and/or deemed moot because the pending motion challenges the NRA’s Original Complaint, filed on August 30, 2019, and not the current operative complaint, the First Amended Complaint, filed on October 25, 2019. *See King v. Dogan*, 31 F.3d 344, 346 (5th Cir.1994) (“An amended complaint supersedes the original complaint and renders it of no legal effect”); *Ramirez*

v. Cty. of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015) (“Consequently, the Plaintiff’s Second Amended Complaint superseded the First Amended Complaint, and the First Amended Complaint ceased to exist. Because the Defendants’ motion to dismiss targeted the Plaintiff’s First Amended Complaint, which was no longer in effect, we conclude that the motion to dismiss should have been deemed moot before the district court granted it.”). Plaintiff the NRA submits that good cause has been shown for these reasons and those explained in the accompanying proposed stipulation and order.

WHEREFORE Plaintiff the NRA requests that the Court grant this motion and order (1) Defendants’ Motion to Dismiss for Failure to State a Claim, *see* ECF Nos. 9-10, shall be deemed withdrawn; and (2) that the parties shall meet and confer concerning a reasonable schedule for briefing any additional motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) and present such schedule to the Court no later than November 1, 2019, for the Court’s approval.

Dated: October 29, 2019

Respectfully submitted,

**BREWER, ATTORNEYS &
COUNSELORS**

By: /s/ Michael J. Collins

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**ATTORNEYS FOR THE PLAINTIFF-
COUNTER-DEFENDANT NATIONAL
RIFLE ASSOCIATION OF AMERICA**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was electronically served via the Court's electronic case filing system upon all counsel of record on this 29th day of October 2019:

/s/ Michael J. Collins

Michael J. Collins